



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of WPDES Permit No. WI-0061794-04-0, Issued to B&D Dairy Farm, LLC

Case No. DNR-19-0004

NOTICE OF CONTESTED CASE HEARING AND ORDER FOR PUBLICATION

On July 1, 2019, the Department of Natural Resources (DNR) issued a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit, No. WI-0061794-04-0, to B&D Dairy Farm, LLC. The permit was issued to regulate the discharge from a livestock operation located at (Main Farm) W7251 E. 6th Rd., Pound, Wisconsin, (Heifer Facility) W7276 E. 6th Rd., Pound, Wisconsin, (Little River Satellite WSF) 7651 Hillcrest Rd., Oconto, Wisconsin, which would discharge into Little Peshtigo River, Lower Peshtigo River, Little River, Middle Peshtigo River and Thunder River Watersheds, Lake Michigan Basin in accordance with the effluent limitations, monitoring requirements, and other conditions on the management and utilization of manure and process wastewater specified in the permit.

On July 26, 2019, the B&D Dairy Farm, LLC, filed a Petition for a Contested Case Hearing with the DNR to review the decision to reissue the WPDES permit to B&D Dairy Farm, LLC, pursuant to Wis. Stat. § 283.63.

By letter dated August 6, 2019, the DNR granted the request for contested case hearing and limited the hearing to the following issues:

1. The reasonableness of Sections 2, 3.5, and 3.6 of the Permit requiring installation of a groundwater monitoring system and monitoring of groundwater at the B&D production area (Petition Issues 1.b. and 5.a).
2. The reasonableness of the due dates to install a groundwater monitoring system in Section 3.5 of the Permit (Petition issues 1.c. and 5.c.).
3. The reasonableness of the schedule for submitting, if needed, Plans and Specifications and Corrections and Post Construction Documentation for Feed Storage Runoff Controls in Section 3.7 of the Permit (Petition issues 1.d., 5.d. and 5.e.).
4. The reasonableness of the schedule for submitting, if needed, Plans and Specifications and Corrections and Post Construction Documentation for the Runoff Controls for the heifer facility lots, the NW calf hutch area and the NE calf hutch area in Section 3.8 of the Permit (Petition issues 1.d., 5.d. and 5.e.).
5. The reasonableness of the schedule for submitting, if needed, Plans and Specifications and Corrections and Post Construction Documentation for the Runoff Controls for the Manure Storage Facility 1 in Section 3.10 of the Permit (Petition issues 1.d., 5.d. and 5.f.).
6. The reasonableness of omitting from the Permit provisions to accommodate projected growth of the herd to 19,590 animal units during the permit term (Petition issue 1.g.).

The parties settled issues 3-6 in subsequent negotiations and withdrew them from consideration for hearing, and consequently only issues 1 and 2 remain disputed for the contested case hearing.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a public hearing on the above matter pursuant to Wis. Stat. § 283.63(1)(b) and Wis. Admin. Code Ch. NR 203 in Oconto, Wisconsin, at the Oconto County Courthouse, 301 Washington Street in Rooms 1003 and 1004 on July 14 and 15, 2020 commencing at 8:30 a.m. and concluding no later than 4:00 p.m. each day. Members of the public desiring to participate in this hearing pursuant to Wis. Admin. Code § NR 2.08 will be allowed the opportunity to do so at the end of the hearing. Such interested persons should enter an appearance either prior to or at the commencement of the contested case hearing.

The hearing is a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a), and the fair play provisions of Wis. Stat. ch. 227 will apply. The procedures relating to contested cases set forth in Wis. Admin. Code ch. NR 2 will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at a court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request at least 10 days before the date of the scheduled hearing.

ORDER FOR PUBLICATION

THE DIVISION, THEREFORE, ORDERS:

Pursuant to Wis. Admin. Code § NR 203.18(3), the DNR shall cause a copy of the foregoing Notice to be published once **no less than** 30 days before the date of hearing as a class 1 notice under Ch. 985, Stats., in a newspaper of general circulation in the area affected by the discharge. Furthermore, pursuant to Wis. Admin. Code § NR 2.08(5), the DNR shall comply with all of the requirements of Wis. Admin. Code § NR 203.18(3). Finally, the DNR shall furnish proof of publication to the Division of Hearings and Appeals by **June 19, 2020**.

Dated at Milwaukee, Wisconsin on January 28, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Kristine M. Kerig
Administrative Law Judge